

EXHIBIT 42

PART 1

1 **C O N F I D E N T I A L**

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 THE AUTHORS GUILD, et al.,

CONFIDENTIAL

6
7 Plaintiffs,

8 - against- Master File No.

9 05 CV 8136-DC

10

11 GOOGLE, INC.,

12 Defendant.

13 -----X

14

15 June 8, 2012

16 9:30 a.m.

17

18 Deposition of JUDITH A. CHEVALIER,

19 held at the offices of Milberg, LLP, One

20 Penn Plaza, New York, New York, pursuant to

21 Agreement, before NANCY SORENSEN, a Notary

22 Public of the State of New York.

23

24

25

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 APPEARANCES:</p> <p>3 BONI & ZACK, LLC</p> <p>4 Attorneys for Plaintiffs</p> <p>5 15 St. Asaphs Road</p> <p>6 Bala Cynwyd, Pennsylvania 19004</p> <p>7 BY: JOANNE ZACK, ESQ.</p> <p>8</p> <p>9 DURIE TANGRI</p> <p>10 Attorneys for Defendant</p> <p>11 217 Leidesdorff Street</p> <p>12 San Francisco, California 94111</p> <p>13 BY: DAVID McGOWAN, ESQ.</p> <p>14</p> <p>15</p> <p>16</p> <p>17 ALSO PRESENT:</p> <p>18 ANY KEATING, ESQ. - GOOGLE</p> <p>19 SAMUEL WEGLEIN, Ph.D. - Analysis Group</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 JUDITH A. CHEVALIER,</p> <p>3 called as a witness, having been duly sworn by a</p> <p>4 Notary Public, was examined and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION BY</p> <p>7 MS. ZACK:</p> <p>8 (Plaintiff's Exhibits 95 and 96,</p> <p>9 Expert Report of Judith A. Chevalier and a</p> <p>10 number of pages collected from Google's</p> <p>11 website concerning the Partner Program,</p> <p>12 marked for identification, as of this</p> <p>13 date.)</p> <p>14 Q. Good morning.</p> <p>15 A. Morning.</p> <p>16 Q. Could you state your full name for</p> <p>17 the record, please?</p> <p>18 A. Sure, Judith Ann Chevalier.</p> <p>19 Q. What is your current position?</p> <p>20 A. I'm a professor at the Yale School of</p> <p>21 Management.</p> <p>22 Q. We have your CV which outlines your</p> <p>23 various positions. I take it that's up to date;</p> <p>24 is that right?</p> <p>25 A. I think so, yes.</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 IT IS HEREBY STIPULATED AND AGREED,</p> <p>3 by and between the attorneys for the respective</p> <p>4 parties herein, that filing and sealing be and</p> <p>5 the same are hereby waived.</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form</p> <p>8 of the question, shall be reserved to the</p> <p>9 time of the trial.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be sworn to</p> <p>12 and signed before any officer authorized to</p> <p>13 administer an oath, with the same force and</p> <p>14 effect as if signed and sworn to before the</p> <p>15 Court.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 Q. You've brought with you someone else.</p> <p>3 Could you just tell us who that is?</p> <p>4 A. Sure, that's Samuel Weglein. He's</p> <p>5 from the Analysis Group.</p> <p>6 Q. How do you spell his last name?</p> <p>7 A. W-E-G-L-E-I-N.</p> <p>8 Q. Did Mr. Weglein assist you with your</p> <p>9 report?</p> <p>10 A. Yes.</p> <p>11 Q. Anyone else?</p> <p>12 A. The staff of the analysis group, in</p> <p>13 general, assisted with my report.</p> <p>14 Q. What kind of assistance did they</p> <p>15 provide?</p> <p>16 A. So I drafted the report. But the</p> <p>17 staff at Analysis Group helped with tracking</p> <p>18 down references, wordsmithing, finding things.</p> <p>19 Things like that.</p> <p>20 Q. You've been retained by Google; is</p> <p>21 that right?</p> <p>22 A. Correct.</p> <p>23 Q. Approximately when were you retained?</p> <p>24 A. I think mid to late March.</p> <p>25 Q. You've been retained as an expert;</p>

2 (Pages 2 - 5)

<p style="text-align: right;">Page 6</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 correct?</p> <p>3 A. Correct.</p> <p>4 Q. What do you consider to be your area</p> <p>5 or areas of expertise?</p> <p>6 A. So economics, industrial</p> <p>7 organization, and the economics of technology,</p> <p>8 and competitive strategy, actually.</p> <p>9 Q. Have you ever done any work for</p> <p>10 Google before?</p> <p>11 A. No.</p> <p>12 Q. Have you ever done any work for any</p> <p>13 search engine before?</p> <p>14 A. No.</p> <p>15 Q. Do you consider yourself an expert on</p> <p>16 publishing?</p> <p>17 A. No.</p> <p>18 Q. Have you ever been retained by Durie</p> <p>19 Tangri before as an expert?</p> <p>20 A. No, I have not.</p> <p>21 Q. By Kecker Van Nest?</p> <p>22 A. I worked on a case in which lawyers</p> <p>23 from Kecker were involved. But I wasn't retained</p> <p>24 by Kecker, I believe.</p> <p>25 Q. Which case was that?</p>	<p style="text-align: right;">Page 8</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. With respect to these five, did you,</p> <p>3 you did provide a report in all five, you said?</p> <p>4 A. Yes.</p> <p>5 Q. Did you attend a deposition in all</p> <p>6 these cases?</p> <p>7 A. No, I attended a deposition in number</p> <p>8 3, Presstek versus Creo, and in number five,</p> <p>9 State Attorney General of New York.</p> <p>10 Q. With respect to the first case, which</p> <p>11 is the Procter & Gamble Company versus the</p> <p>12 Coca-Cola Company?</p> <p>13 A. Yes.</p> <p>14 Q. Who engaged you there, which side of</p> <p>15 the litigation?</p> <p>16 A. Coca-Cola.</p> <p>17 Q. What type of expert opinion did you</p> <p>18 provide in that case, generally?</p> <p>19 A. Yes, that was a patent infringement</p> <p>20 case, and I calculated lost profits.</p> <p>21 Q. Anything else other than calculating</p> <p>22 lost profits?</p> <p>23 A. I don't think so.</p> <p>24 Q. What about the second case, which</p> <p>25 apparently was an arbitration; correct?</p>
<p style="text-align: right;">Page 7</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. That was the State Attorney General</p> <p>3 of New York versus Intel.</p> <p>4 Q. We have pre-marked as PX 95 your</p> <p>5 report, and here is a copy. I'm sorry, I don't</p> <p>6 have copies for the others.</p> <p>7 I think that we'll start by looking</p> <p>8 at the list of your previous engagements, which</p> <p>9 is Exhibit B, I believe, to your report?</p> <p>10 A. Yes.</p> <p>11 Q. This is a list within the past four</p> <p>12 years; correct?</p> <p>13 A. Actually, as I was reviewing this</p> <p>14 yesterday, I noticed that I believe the prior,</p> <p>15 the first three engagements are a little bit</p> <p>16 older. I should have fixed that.</p> <p>17 Q. Other than these five engagements,</p> <p>18 have you been an expert in any other cases?</p> <p>19 A. So these are the only cases where</p> <p>20 I've filed reports.</p> <p>21 Q. Have you consulted as an expert in</p> <p>22 other cases?</p> <p>23 A. I've consulted as an expert in cases</p> <p>24 that have, you know, settled or, you know,</p> <p>25 somehow ended before I filed a report.</p>	<p style="text-align: right;">Page 9</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. Correct.</p> <p>3 Q. It says, I guess that's SESAC, Inc.</p> <p>4 versus Television Music License Committee?</p> <p>5 A. Yes.</p> <p>6 Q. Which side were you retained by?</p> <p>7 A. SESAC.</p> <p>8 Q. What does SESAC stand for?</p> <p>9 A. I think technically it doesn't stand</p> <p>10 for anything anymore.</p> <p>11 Q. Okay.</p> <p>12 A. They once did.</p> <p>13 Q. What do they do?</p> <p>14 A. They license performance rights for</p> <p>15 music.</p> <p>16 Q. What expert opinion were you, did you</p> <p>17 provide there, generally?</p> <p>18 A. There, I was asked to provide an</p> <p>19 opinion about the structure of the contract that</p> <p>20 the television stations would receive from</p> <p>21 SESAC.</p> <p>22 Q. What was the nature of your opinion?</p> <p>23 A. Well, I think that's under -- I mean</p> <p>24 I believe it's under protective order. So, but</p> <p>25 generally speaking, my opinion had to do with</p>

3 (Pages 6 - 9)

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Page 10

1 J.A. Chevalier - C O N F I D E N T I A L
2 different -- yeah, I'm not sure exactly a good
3 way to say it, different type of contractual
4 forms and the effect they would have.
5 Q. These were SESAC contracts?
6 A. Yes.
7 Q. In order to prepare that expert
8 report, did you study the market for the
9 licensing of music?
10 MR. McGOWAN: Object, foundation.
11 You may answer.
12 A. I studied, I studied -- the market
13 for licensing music is very complicated, and
14 there's a number of different pieces. I studied
15 a narrow piece.
16 Q. Just generally, what was the narrow
17 piece that you studied?
18 A. So performance licenses for
19 television.
20 Q. So performance licenses for music on
21 television?
22 A. Correct.
23 Q. Number 3 on your list is Presstek,
24 Inc. versus Creo, Inc. Who engaged you there?
25 A. Creo.

Page 11

1 J.A. Chevalier - C O N F I D E N T I A L
2 Q. What is the nature of their business?
3 A. They make printing products. Well,
4 they may do other things, but the case involved
5 printing products.
6 Q. Generally, what was the nature of
7 your report in that case?
8 A. That was also a patent infringement
9 case, and I also calculated lost profits.
10 Q. Did you do regression analyses in
11 these cases where you calculated lost profits?
12 A. I think so.
13 Q. What was the -- I'm guessing that the
14 first case was a 2002 case, is that right, case
15 number one?
16 A. That's my -- I don't remember. But
17 that sounds approximately the right time frame.
18 Q. Referring you to number 4, Advanced
19 Micro Devices, Inc. versus Intel Corporation.
20 Who retained you there?
21 A. Intel.
22 Q. What was the nature of your opinion?
23 A. So that in that case, I provided an
24 analysis of how competitive strategies in the
25 market would succeed or fail in a but for

Page 12

1 J.A. Chevalier - C O N F I D E N T I A L
2 environment.
3 Q. Was it a patent case or --
4 A. No, it's an antitrust case.
5 Q. Did you, in that case, opine on a
6 relevant market or --
7 A. No.
8 Q. You didn't do damages in that case?
9 A. I did not.
10 Q. Case number five, is that another
11 antitrust case?
12 A. Yes.
13 Q. I take it you were retained by Intel?
14 A. Yes.
15 Q. Was your opinion the same there or
16 different than in the other Intel case?
17 A. It was a different report. And the
18 assignment was slightly different. But it was,
19 it was, you know, at a high level, it was the
20 same. It was to analyze the success or failure
21 of competitive strategies in the but for
22 environment.
23 Q. So that was to assist the damage
24 analysis?
25 A. I think it might have assisted both

Page 13

1 J.A. Chevalier - C O N F I D E N T I A L
2 liability and damages.
3 Q. Have you testified before Congress?
4 A. No.
5 Q. Have you written any articles on
6 copyright matters?
7 A. No.
8 Q. On patent matters?
9 A. No.
10 Q. Have you written any articles on
11 search engines?
12 A. No.
13 Q. On Google?
14 A. No.
15 Q. Amazon?
16 A. Amazon, I've written an article on
17 Amazon, yes.
18 Q. What about Microsoft?
19 A. No.
20 Q. What was your article on Amazon
21 about?
22 A. I have three.
23 Q. Um-hmm?
24 A. Two of them were about loosely
25 estimating cross price elasticities between

<p style="text-align: right;">Page 14</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 Amazon and Barnes & Noble in the book selling</p> <p>3 market.</p> <p>4 A second was about user reviews and</p> <p>5 the effect of user reviews at Amazon and Barnes</p> <p>6 & Noble.</p> <p>7 Q. Right.</p> <p>8 A. Actually, I have another paper that</p> <p>9 used data from Amazon, so I don't know if you</p> <p>10 want to count that. That used data from the</p> <p>11 used book marketplace at Amazon.</p> <p>12 Q. What type of data about used books?</p> <p>13 A. Prices and sales. Well, I guess</p> <p>14 prices, prices and attributes.</p> <p>15 Q. Not sales?</p> <p>16 A. No. They were, in all of these</p> <p>17 cases, these weren't data that we received from</p> <p>18 Amazon, it was data we collected from the</p> <p>19 website.</p> <p>20 Q. Any other articles that -- three or</p> <p>21 four, I'm sorry, I thought you said there were</p> <p>22 three.</p> <p>23 Were you including this one that</p> <p>24 you --</p> <p>25 A. So there were three about Amazon.</p>	<p style="text-align: right;">Page 16</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 A. Since I've written the report, I</p> <p>3 reviewed deposition testimony from Bruce Harris</p> <p>4 and Gloriana St. Clair.</p> <p>5 Q. Anything else?</p> <p>6 A. No.</p> <p>7 Q. Did anything you read in those</p> <p>8 depositions cause you to have any changes or</p> <p>9 additions to your report?</p> <p>10 A. No.</p> <p>11 Q. You didn't read the reports of</p> <p>12 plaintiff's experts?</p> <p>13 A. Oh, I did, yes, sorry.</p> <p>14 Q. Which reports did you read?</p> <p>15 A. I read the report of Ben Edelman.</p> <p>16 Q. Um-hmm?</p> <p>17 A. And I read the report of Mr. Gervais.</p> <p>18 Q. Did anything in those reports cause</p> <p>19 you to have any changes or additions to your</p> <p>20 report?</p> <p>21 A. No.</p> <p>22 Q. In paragraph 8 of page 2 of your</p> <p>23 report, you say, "My work in this case is</p> <p>24 ongoing, and I may amend or supplement this</p> <p>25 report in light of new information, additional</p>
<p style="text-align: right;">Page 15</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 There were three that I would say were, you</p> <p>3 know, explicitly more about Amazon, so --</p> <p>4 Q. The first one was the cross price</p> <p>5 elasticity --</p> <p>6 A. There were two related to the cross</p> <p>7 price elasticity.</p> <p>8 MR. MCGOWAN: I just caution that you</p> <p>9 need to take turns speaking.</p> <p>10 A. Sorry.</p> <p>11 Q. Just for the sake of the record.</p> <p>12 A. Sorry.</p> <p>13 Q. That's all right.</p> <p>14 Referring you to, do you have Exhibit</p> <p>15 C of your report, which is PX 95?</p> <p>16 A. Yes.</p> <p>17 Q. Is this a comprehensive list of</p> <p>18 everything that you reviewed in connection with</p> <p>19 your report?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. The first category here is legal</p> <p>22 filings, and you list various legal documents</p> <p>23 from this lawsuit.</p> <p>24 Since you've written the report, have</p> <p>25 you reviewed any other documents?</p>	<p style="text-align: right;">Page 17</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 discovery, or expert testimony and opinion in</p> <p>3 this case."</p> <p>4 So as of now, having reviewed these</p> <p>5 additional materials, you have nothing to amend</p> <p>6 or supplement?</p> <p>7 A. Correct.</p> <p>8 Q. So you were retained mid to late</p> <p>9 March?</p> <p>10 A. Correct.</p> <p>11 Q. Did you talk to anybody from Google</p> <p>12 in connection with writing this report?</p> <p>13 A. No.</p> <p>14 Q. I take it you talked to Google's</p> <p>15 counsel; right?</p> <p>16 A. Correct.</p> <p>17 Q. Did you talk to in-house counsel?</p> <p>18 A. No, I only talked to Mr. McGowan.</p> <p>19 Q. You didn't talk to any of the</p> <p>20 business personnel at Google?</p> <p>21 A. No.</p> <p>22 Q. Did you seek to talk to them?</p> <p>23 A. No.</p> <p>24 Q. Did you do any empirical research for</p> <p>25 this report?</p>

5 (Pages 14 - 17)

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<p style="text-align: right;">Page 18</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 MR. McGOWAN: Objection, vague.</p> <p>3 You may answer.</p> <p>4 Q. Do you understand my question?</p> <p>5 A. Yes. So, well, actually, let me</p> <p>6 clarify your question. So do you mean did I use</p> <p>7 any numbers for the report?</p> <p>8 Q. Did you do any research involving any</p> <p>9 review of data or numbers?</p> <p>10 A. Yes.</p> <p>11 Q. What research was that?</p> <p>12 A. So we obtained a listing of members</p> <p>13 of publishers that were members of the Partner</p> <p>14 Program, and we compared that to -- I compared</p> <p>15 that to -- I instructed my staff to find a list</p> <p>16 of top publishers in the U.S., and there's a</p> <p>17 discussion in the report of a comparison between</p> <p>18 those lists. So it's data that we used.</p> <p>19 Q. Any other data?</p> <p>20 A. There was data from the Partner</p> <p>21 Program that I looked at.</p> <p>22 Q. What type of data?</p> <p>23 A. Data about the -- data about the</p> <p>24 members of the Partner Program and the records</p> <p>25 from the Partner Program.</p>	<p style="text-align: right;">Page 20</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 that's the piece that I don't see here, as I sit</p> <p>3 here. Though, it I may be forgetting where it's</p> <p>4 put.</p> <p>5 RQ MS. ZACK: If that data has not been</p> <p>6 produced to plaintiffs, I would request</p> <p>7 that it be produced.</p> <p>8 MR. McGOWAN: It has been produced.</p> <p>9 MS. ZACK: Are you talking about</p> <p>10 particular PX's or documents with Bates</p> <p>11 numbers?</p> <p>12 MR. McGOWAN: It's a Bates labeled</p> <p>13 document.</p> <p>14 MS. ZACK: Can you amend, tell me</p> <p>15 what the numbers are, so we can amend this,</p> <p>16 and I can know what we're referring to.</p> <p>17 MR. McGOWAN: Perhaps at the break if</p> <p>18 you give me a moment.</p> <p>19 MS. ZACK: Yes, sure. I'm not asking</p> <p>20 you to do it this second.</p> <p>21 MR. McGOWAN: I understand.</p> <p>22 Q. You say in your report that you had a</p> <p>23 conversation with Bruce Harris; is that correct?</p> <p>24 A. I did.</p> <p>25 Q. That was over the telephone?</p>
<p style="text-align: right;">Page 19</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. What do you mean by records?</p> <p>3 A. So there's a listing of the partners</p> <p>4 and their relationships over time, and the</p> <p>5 payments.</p> <p>6 Q. What type of payments?</p> <p>7 A. Payments relating to the Partner</p> <p>8 Program. So payments to the partners.</p> <p>9 Q. Anything else? Any other data?</p> <p>10 A. No, I don't think so.</p> <p>11 Q. You didn't personally do any analysis</p> <p>12 of Google's costs in connection with either the</p> <p>13 Partner Program or the Library Project?</p> <p>14 A. No, I did not.</p> <p>15 Q. Is the data that you looked at</p> <p>16 included in the list that is Exhibit C to your</p> <p>17 report, the data you just referred to?</p> <p>18 A. I think so. Let me check exactly how</p> <p>19 that -- well, the, the Nielson BookScan Report</p> <p>20 is included. I don't, as I see here, see the</p> <p>21 list of participants in the Publishers Program</p> <p>22 included, though it may be included by reference</p> <p>23 in another piece.</p> <p>24 Q. What about the data about payments?</p> <p>25 A. So that's the same data source. Yes,</p>	<p style="text-align: right;">Page 21</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. Yes.</p> <p>3 Q. Was that at your request?</p> <p>4 A. Yes.</p> <p>5 Q. How long was that conversation?</p> <p>6 A. I don't recall precisely. I would</p> <p>7 say on the order of a half an hour.</p> <p>8 Q. Did you take notes?</p> <p>9 A. I don't think so.</p> <p>10 Q. So you didn't take any notes?</p> <p>11 A. No.</p> <p>12 Q. What did he tell you?</p> <p>13 A. I asked about common practice in the</p> <p>14 industry, and I asked about advice he would give</p> <p>15 his clients.</p> <p>16 Q. Anything else?</p> <p>17 A. Not that I recall.</p> <p>18 Q. You asked him about common practice</p> <p>19 in the industry about what?</p> <p>20 A. So I asked him about common practice</p> <p>21 about the use of excerpts to promote books.</p> <p>22 Q. Anything else? Any other common</p> <p>23 practices?</p> <p>24 A. We discussed, in general, the</p> <p>25 difficulty in the industry of being found, of a</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 book being found by readers.</p> <p>3 So, and the common practices in the</p> <p>4 industry for publishers to help their books</p> <p>5 reach readers.</p> <p>6 Q. Anything else about common practices?</p> <p>7 A. That's what I recall.</p> <p>8 Q. You asked him about advice he would</p> <p>9 give his clients, and that was on what subjects,</p> <p>10 advice he would give them on what subjects?</p> <p>11 A. So I asked whether he would encourage</p> <p>12 clients to make their books available to</p> <p>13 programs like Amazon Search Inside the Book or</p> <p>14 other programs that would display parts of the</p> <p>15 book to consumers.</p> <p>16 Q. You asked him about whether he would</p> <p>17 encourage his clients to make their books</p> <p>18 available in Amazon Search Inside the Book.</p> <p>19 Did you ask him about whether he</p> <p>20 would encourage his clients to make their books</p> <p>21 available in Google Books?</p> <p>22 A. Yes. I did similar, yes.</p> <p>23 Q. Anything else?</p> <p>24 A. That's what I recall.</p> <p>25 Q. What did he tell you about whether he</p>	<p style="text-align: right;">Page 24</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 correct.</p> <p>3 Q. You didn't care about whether he</p> <p>4 really did it?</p> <p>5 MR. McGOWAN: Objection,</p> <p>6 argumentative.</p> <p>7 You may answer.</p> <p>8 A. I believe I asked what type of advice</p> <p>9 he would give his clients, and I don't believe I</p> <p>10 clarified whether that was advice he had given</p> <p>11 his clients or whether that was advice that if a</p> <p>12 client asked, he would give.</p> <p>13 Q. So did your conversation with him</p> <p>14 form the basis of any of your conclusions?</p> <p>15 A. My conversation with him contributed</p> <p>16 to my conclusions. Though, I also relied, you</p> <p>17 know, on his reports and the other reports.</p> <p>18 My conversation with him was not the</p> <p>19 sole basis of any conclusion.</p> <p>20 Q. I'm just talking about the subject</p> <p>21 matter of industry custom and practice.</p> <p>22 What were the bases of your</p> <p>23 conclusions about that subject matter?</p> <p>24 A. Oh, so more generally, is your</p> <p>25 question more generally in the report, what are</p>
<p style="text-align: right;">Page 23</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 would or wouldn't encourage his clients to make</p> <p>3 their books available in Amazon Search Inside</p> <p>4 the Book?</p> <p>5 A. So my recollection is that he</p> <p>6 answered that he would encourage his clients, in</p> <p>7 general, to make their books available in a wide</p> <p>8 variety of platform that would allow customers</p> <p>9 to see the book. So including Search Inside the</p> <p>10 Book.</p> <p>11 Q. Did he specifically say he encouraged</p> <p>12 the use of Search Inside the Book by his</p> <p>13 clients?</p> <p>14 A. I don't recall whether I asked him if</p> <p>15 he did encourage his clients or whether he would</p> <p>16 encourage his clients.</p> <p>17 I asked, I believe I asked if his</p> <p>18 clients were seeking advice, would he encourage</p> <p>19 them to make the book available to programs,</p> <p>20 such as Google Books or Amazon Search Inside the</p> <p>21 Book, and he answered that he would.</p> <p>22 Q. So you didn't ask him whether he</p> <p>23 actually did it, you just asked him whether you</p> <p>24 would do it?</p> <p>25 A. I can't recall, but I believe that's</p>	<p style="text-align: right;">Page 25</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 the bases of my conclusions about industry</p> <p>3 practice?</p> <p>4 Q. Right. You cite Mr. Harris quite</p> <p>5 extensively.</p> <p>6 A. I do. So my conversation with</p> <p>7 Mr. Harris, Mr. Harris's report, Mr. Greco's</p> <p>8 report, Mr. Aiken's deposition, Mr. Zohn's</p> <p>9 deposition, and Mr. Perle's deposition and</p> <p>10 report, all contributed to my understanding of</p> <p>11 practice in the industry.</p> <p>12 Q. Anything else?</p> <p>13 A. So there are other materials I cite</p> <p>14 that are related to practice in the industry,</p> <p>15 but I would say the ones I described were the</p> <p>16 main ones.</p> <p>17 Q. What other materials that you cite</p> <p>18 were relevant to that issue?</p> <p>19 A. So, for example, I cite here --</p> <p>20 Q. Can you just tell me the page?</p> <p>21 A. Sure. I'm sorry, the page is not</p> <p>22 numbered, but towards the end of Appendix C,</p> <p>23 Publicly Available Sources.</p> <p>24 For example, I quote an industry</p> <p>25 practitioner from the Investors Business Daily</p>

7 (Pages 22 - 25)

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<p style="text-align: right;">Page 26</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 article, and that's in the report.</p> <p>3 These iUniverse citations, for</p> <p>4 example, have to do with -- they're mostly in a</p> <p>5 footnote, but have to do with promotional</p> <p>6 practices in the industry.</p> <p>7 These are the ones that I notice,</p> <p>8 offhand. For example, well, this is "Amazon</p> <p>9 announces the first publicly available source.</p> <p>10 Amazon announces sales impact from new Search</p> <p>11 Inside the Book features." There's some</p> <p>12 information that, that I used to describe</p> <p>13 practice in the industry.</p> <p>14 Q. Okay, now you've read Mr. Harris's</p> <p>15 deposition?</p> <p>16 A. I have.</p> <p>17 Q. You saw that he said that he had</p> <p>18 never actually advised any clients to put their</p> <p>19 books in the Google Partner Program?</p> <p>20 A. Yes.</p> <p>21 Q. Does that affect your analysis in any</p> <p>22 way?</p> <p>23 A. It doesn't affect my analysis,</p> <p>24 because my understanding from my conversation</p> <p>25 with him and my understanding from my -- from</p>	<p style="text-align: right;">Page 28</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. Correct.</p> <p>3 Q. Partner Program is by permission?</p> <p>4 A. Correct.</p> <p>5 Q. Are you aware of any programs, other</p> <p>6 than the portion of Google Books that we call</p> <p>7 the Library Project, that involve the placement</p> <p>8 of books that are in copyright into search</p> <p>9 engines, without permission?</p> <p>10 A. I think -- could you clarify what you</p> <p>11 mean by placement into search engines?</p> <p>12 I mean, so, for example, reviews</p> <p>13 contain excerpts of books, and excerpts of books</p> <p>14 are therefore, you know, found in search</p> <p>15 engines. But I don't think, I don't know if</p> <p>16 that's your question.</p> <p>17 Q. Are we talking, is your report about</p> <p>18 Google's search engine or about Google Books?</p> <p>19 A. My report is about Google Books, but</p> <p>20 you asked about search engines.</p> <p>21 Q. Are you aware of any book search</p> <p>22 engine in which books have been placed without</p> <p>23 permission, in copyright books, other than in</p> <p>24 Google Books?</p> <p>25 A. So I guess what I'm trying to get at</p>
<p style="text-align: right;">Page 27</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 his report, and my understanding from his</p> <p>3 deposition, and my understanding from the other</p> <p>4 materials that I relied on, was that, in</p> <p>5 general, he and many of the other industry</p> <p>6 practitioners that I'm referring to, as a</p> <p>7 general practice, encouraged authors or</p> <p>8 publishers to participate in any programs that</p> <p>9 had the feature of allowing consumers to find</p> <p>10 their books through excerpts.</p> <p>11 Q. So you understand that it's the</p> <p>12 general practice in the publishing industry for</p> <p>13 publishers to allow their books to be placed in</p> <p>14 search engines without permission?</p> <p>15 MR. McGOWAN: Objection, misstates.</p> <p>16 Q. Is that your understanding?</p> <p>17 A. That's not what I said.</p> <p>18 Q. Well, do you understand that to be</p> <p>19 the practice?</p> <p>20 A. What I understand to be the practice</p> <p>21 is that it is common, it is common practice in</p> <p>22 the industry for publishers to make excerpts</p> <p>23 available through a variety of programs.</p> <p>24 Q. Amazon within Search, Amazon's Search</p> <p>25 Within the Book is by permission; correct?</p>	<p style="text-align: right;">Page 29</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 is I think you mean by that, where the full text</p> <p>3 of the book has been placed in the search</p> <p>4 engine.</p> <p>5 Q. No, I don't mean that. I mean text</p> <p>6 of the books.</p> <p>7 MR. McGOWAN: : Asked and answered.</p> <p>8 MS. ZACK: No, it isn't.</p> <p>9 Q. Let me ask it a different way.</p> <p>10 A. Okay.</p> <p>11 Q. You tell me every search engine where</p> <p>12 you understand that books are available by</p> <p>13 search, for search?</p> <p>14 A. So again, my question, my -- why I</p> <p>15 don't completely understand your question is</p> <p>16 when you say books are available for search, do</p> <p>17 you mean the entirety of the book is available</p> <p>18 for search?</p> <p>19 Q. Yes.</p> <p>20 A. Okay, then I can answer your</p> <p>21 question.</p> <p>22 Q. Okay.</p> <p>23 A. So I believe that Google Books is the</p> <p>24 only program, that I'm aware of, that has that</p> <p>25 feature.</p>

<p style="text-align: right;">Page 30</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. What portion? It's not in the</p> <p>3 Partner Program that has that feature; correct?</p> <p>4 MR. McGOWAN: Objection, vague.</p> <p>5 Q. Does Google Partner Program allow the</p> <p>6 search of the full book?</p> <p>7 A. My understanding is that the Google</p> <p>8 Partner Program, that -- I believe that books in</p> <p>9 the Google Partner Program can be searched, so</p> <p>10 that when a search term that the consumer uses</p> <p>11 is found in the book, the book will appear.</p> <p>12 Q. That's by permission; correct?</p> <p>13 A. That is by permission; correct.</p> <p>14 Q. The same for Amazon Search Within the</p> <p>15 Book?</p> <p>16 A. Correct, that's by permission.</p> <p>17 Q. Are you aware of any other search</p> <p>18 engine that searches the entire book by</p> <p>19 permission?</p> <p>20 A. No.</p> <p>21 Q. The only search engine that you are</p> <p>22 aware of that searches the entire book, without</p> <p>23 permission, is Google Books?</p> <p>24 A. Correct.</p> <p>25 Q. As to Google Books, it's only books</p>	<p style="text-align: right;">Page 32</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 to allow entire books to be searched on search</p> <p>3 engines, without permission of copyright owners;</p> <p>4 are you?</p> <p>5 A. I guess since you've used the term</p> <p>6 "allow" and "without permission" in the same</p> <p>7 sentence, I'm finding it very difficult to</p> <p>8 answer this question.</p> <p>9 Q. You can't answer the question? All</p> <p>10 right, let me hear it restated, and I'll restate</p> <p>11 it.</p> <p>12 (The record was read.)</p> <p>13 Q. You can't answer that question?</p> <p>14 A. I can't answer that question.</p> <p>15 Q. You're not opining here that there is</p> <p>16 a custom and practice in the publishing industry</p> <p>17 whereby publishers permit, without permission,</p> <p>18 their books to be searched in search engines,</p> <p>19 their entire books to be searched in search</p> <p>20 engines?</p> <p>21 MR. McGOWAN: Objection, vague.</p> <p>22 Q. Can you answer that?</p> <p>23 A. I'm sorry, so you're asking me</p> <p>24 whether publishers permit, without permission, I</p> <p>25 just, I can't, I don't understand what you mean</p>
<p style="text-align: right;">Page 31</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 that were copied in the Library Project that had</p> <p>3 that feature, correct, of being without</p> <p>4 permission?</p> <p>5 A. Correct.</p> <p>6 Q. Do you think a sample of one</p> <p>7 establishes a custom and practice?</p> <p>8 MR. McGOWAN: Objection, vague.</p> <p>9 You may answer.</p> <p>10 A. So your question was not about</p> <p>11 permission. Your question originally -- I guess</p> <p>12 I don't understand your question.</p> <p>13 Q. I will rephrase it because I did, you</p> <p>14 know, segue a little bit further back.</p> <p>15 Do you think that having one search</p> <p>16 engine that displays without permission -- or</p> <p>17 searches, excuse me, without permission the</p> <p>18 entire book, establishes a custom and practice</p> <p>19 in an industry?</p> <p>20 A. I haven't -- I described to you the</p> <p>21 custom and practice in the industry with regard</p> <p>22 to making promotional materials available. So I</p> <p>23 guess I don't understand your question.</p> <p>24 Q. So you're not opining that there's a</p> <p>25 custom and practice in the publishing industry</p>	<p style="text-align: right;">Page 33</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 by that.</p> <p>3 Q. You don't understand the concept of</p> <p>4 permission in publishing?</p> <p>5 A. I do understand the concept of</p> <p>6 permission in publishing.</p> <p>7 Q. Well, why don't you tell me what that</p> <p>8 is then? What do you understand about</p> <p>9 publishing permission?</p> <p>10 A. So I understand that, for example, in</p> <p>11 this case, publishers permit Amazon Search</p> <p>12 Inside the Book to search inside the book.</p> <p>13 And I also understand that publishers</p> <p>14 permit the Google Partner Program to Search</p> <p>15 Inside the Book and to display excerpts of the</p> <p>16 book, so I understand that.</p> <p>17 And I understand that the publisher,</p> <p>18 yes, I understand that the publisher gives</p> <p>19 permission for those programs.</p> <p>20 And I understand that the books in</p> <p>21 the Library Project have not received that</p> <p>22 permission.</p> <p>23 Q. You can't tell me any other search</p> <p>24 engine that searches the entire book, that does</p> <p>25 so without permission; correct?</p>

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Page 34

1 J.A. Chevalier - CONFIDENTIAL

2 MR. McGOWAN: Asked and answered.

3 You may answer.

4 Q. Correct?

5 A. Correct.

6 Q. So what I'm asking you is from all

7 that information, do you discern a custom and

8 practice with respect to the placement and

9 search of in copyright books in Google Books?

10 A. By custom and practice, it is my

11 understanding that publishers in a wide variety

12 of formats and authors, encourage sampling from

13 their books.

14 I also understand that the Google

15 Books provides sampling from the books.

16 Q. So do you understand from any source

17 that publishers and authors encourage sampling

18 of their books in search engines that display or

19 search entire books without a copyright

20 permission?

21 MR. McGOWAN: Objection. Vague and

22 compound.

23 You may answer.

24 A. Sorry, can you repeat that?

25 MS. ZACK: Please re-read it.

Page 35

1 J.A. Chevalier - CONFIDENTIAL

2 (The record was read.)

3 A. So I think perhaps the difficulty

4 here is that the permission is, the -- as I

5 explained in my report, the getting noticed of

6 the book, the advertising, the creation of

7 awareness, is the economic construct in which,

8 you know, publishers and authors have an

9 interest.

10 They give permission for that in many

11 circumstances. But it's not, it's not the

12 giving of permission that creates value for

13 them. It's the advertising of the book.

14 So I understand that -- what I

15 understand, my inference from the Google Partner

16 Program, is that when given an opportunity to

17 provide more materials, have a greater display

18 of the book, many publishers, all of the large

19 publishers in the U.S., have found that to be a

20 valuable opportunity.

21 Q. Do you understand that all the

22 publishers who are members of the Partner

23 Program, allow all their books to be placed in

24 the Partner Program?

25 A. I don't know that they do.

Page 36

1 J.A. Chevalier - CONFIDENTIAL

2 Q. Have you asked anyone whether that's

3 true or not?

4 A. I have not.

5 Q. You didn't ask Google?

6 A. I imagine there may be books that

7 they don't place in the Partner Program, but I

8 didn't ask.

9 Q. So you imagined that a publisher

10 might make a choice not to put certain books

11 into the Partner Program; correct?

12 A. They might.

13 Q. Why might they not do that?

14 MR. McGOWAN: Objection. Calls for

15 speculation.

16 You may answer.

17 MS. ZACK: She said she imagined.

18 A. Yes, so I concede that it is possible

19 that publishers may not put all of the books in

20 the partner Program.

21 But I have not investigated whether,

22 to what extent that is true or why that might

23 be.

24 Q. You don't think that's relevant to

25 your report?

Page 37

1 J.A. Chevalier - CONFIDENTIAL

2 A. I investigated the participation of

3 publishers in the Partner Program. I do not

4 know of -- I do not know of books that are

5 exceptions to that program, you know.

6 Q. If I told you that there were, would

7 that change your analysis?

8 A. If you told me that there were some

9 exceptions, that would not change my analysis.

10 If you told me that, if you told me

11 that -- yes, if you told me there were some

12 exceptions, that would not change my analysis.

13 Q. Suppose I told you that 30 percent of

14 the books aren't put in the Partner Program,

15 would that change your analysis?

16 A. No.

17 Q. How about 50 percent?

18 A. No.

19 Q. Seventy percent of the books?

20 A. If you told me that the publishers

21 who are participating in the Partner Program --

22 I mean I recognize not all publisher participate

23 in the Partner Program.

24 If you told me that of the publishers

25 that participate in the Partner Program, they

<p style="text-align: right;">Page 38</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 chose to keep 30 percent of -- sorry, chose to</p> <p>3 keep 70 percent of new books out of the Partner</p> <p>4 Program, that might change my -- that would</p> <p>5 change my analysis.</p> <p>6 Q. It might or it would?</p> <p>7 A. I would have to think about it. I</p> <p>8 think it would. Now I note that I think that's</p> <p>9 true, there are some cost to publishers of</p> <p>10 participating in a Partner Program.</p> <p>11 So I would have to think about</p> <p>12 exactly -- I would have to think about it, you</p> <p>13 know. I think what I say is true for, you know,</p> <p>14 new books being created by the publisher.</p> <p>15 Q. Well, you haven't talked to</p> <p>16 publishers about why they put their books into</p> <p>17 the Partner Program; have you?</p> <p>18 A. I haven't talked to publishers about</p> <p>19 why they put their books into the Partner</p> <p>20 Program.</p> <p>21 Though some of the material in my</p> <p>22 report discusses, you know, why my understanding</p> <p>23 from industry practice, about why publishers put</p> <p>24 their books in the Partner Program.</p> <p>25 Q. Is it your understanding that</p>	<p style="text-align: right;">Page 40</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 with the bookstore. They, you know, as</p> <p>3 described in Mr. Harris's report, you know, they</p> <p>4 create blads, they create, you know, sample</p> <p>5 chapters. Things like that.</p> <p>6 Q. Anything else?</p> <p>7 A. I think there's a myriad of things</p> <p>8 that they do that are described in the reports.</p> <p>9 But I'm, you know, I'm not an expert in</p> <p>10 publishing marketing.</p> <p>11 Q. Is there any value to a copyright</p> <p>12 owner in the copyright?</p> <p>13 MR. McGOWAN: Objection.</p> <p>14 Q. From an economic point of view?</p> <p>15 A. Is there a value to the owner in the</p> <p>16 copyright?</p> <p>17 Q. Yes.</p> <p>18 A. So by that you mean is there monetary</p> <p>19 value to the copyright?</p> <p>20 Q. Economic value of any type.</p> <p>21 A. Well, okay, so by economic value, I</p> <p>22 think I would take that to mean monetary value.</p> <p>23 And I would say there certainly are for some</p> <p>24 copyrights.</p> <p>25 Q. You don't think there's any other</p>
<p style="text-align: right;">Page 39</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 publishers want to control the publicity for the</p> <p>3 books that they have published?</p> <p>4 MR. McGOWAN: Objection, vague.</p> <p>5 You may answer.</p> <p>6 A. My understanding is that publishers</p> <p>7 allow a wide variety of sampling with different</p> <p>8 degrees of control over what that sampling</p> <p>9 involves.</p> <p>10 For example, books are reviewed</p> <p>11 without the publisher's permission. And they</p> <p>12 don't control whether the book is reviewed or</p> <p>13 the nature of reviews.</p> <p>14 Consumers browse books in bookstores</p> <p>15 and sample. The publisher doesn't control which</p> <p>16 parts of the book the consumer reads or how</p> <p>17 much.</p> <p>18 So there are pieces of the marketing</p> <p>19 of the book that the publisher controls, and</p> <p>20 there are pieces of the marketing of the book</p> <p>21 that the publisher does not control.</p> <p>22 Q. Which pieces does the publisher</p> <p>23 control, to your knowledge?</p> <p>24 A. So, to my knowledge, the publisher</p> <p>25 controls, you know, co-marketing arrangements</p>	<p style="text-align: right;">Page 41</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 value, other than monetary value, in owning a</p> <p>3 copyright?</p> <p>4 MR. McGOWAN: Objection, misstates.</p> <p>5 You may answer.</p> <p>6 A. So there's, you know, economic value</p> <p>7 would be the monetary value of the copyright or</p> <p>8 the possible future monetary value created by</p> <p>9 the copyright.</p> <p>10 Q. Does the copyright basically give the</p> <p>11 owner of the copyright a monopoly?</p> <p>12 A. Well, the copyright gives the</p> <p>13 copyright owner a -- not a monopoly in the</p> <p>14 antitrust sense, but exclusive rights to the</p> <p>15 copyrighted work, subject to the limitations in</p> <p>16 the copyright law.</p> <p>17 Q. From an economic sense, is it a</p> <p>18 monopoly?</p> <p>19 MR. McGOWAN: I object. It's very</p> <p>20 compound, but you may answer.</p> <p>21 A. So is the copyright a monopoly?</p> <p>22 Q. Um-hmm.</p> <p>23 A. So I think in order to answer that</p> <p>24 question, you would first have to ask the</p> <p>25 question of whether the copyrighted goods</p>

11 (Pages 38 - 41)

<p style="text-align: right;">Page 42</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 constitutes a market over which we can normally</p> <p>3 use the term monopoly.</p> <p>4 So copyrighted works compete with one</p> <p>5 another. So in that sense, I don't think I</p> <p>6 would -- I would not use the term monopoly as an</p> <p>7 economist.</p> <p>8 Q. So you would agree that the copyright</p> <p>9 provides some value, in an economic sense, to</p> <p>10 the copyright owner, but you limit it to</p> <p>11 monetary value; is that what your testimony is?</p> <p>12 MR. McGOWAN: Objection.</p> <p>13 A. I have -- you asked me actually about</p> <p>14 economic value?</p> <p>15 Q. Right.</p> <p>16 A. The economic value is the monetary</p> <p>17 value created by the copyright, and the</p> <p>18 potential future monetary value created by the</p> <p>19 copyright.</p> <p>20 Q. Referring you back to your report,</p> <p>21 which is PX 95, referring to you page 2.</p> <p>22 Page 2, paragraph 6, you state, "I</p> <p>23 understand that plaintiffs, three individual</p> <p>24 authors and the Authors Guild, allege that</p> <p>25 Google, Inc., ("Google") has infringed the</p>	<p style="text-align: right;">Page 44</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 A. So I consider myself an expert in the</p> <p>3 areas that I've told you, competitive strategy,</p> <p>4 industrial organization and economics. You</p> <p>5 know, copyrights play a role in that, but I'm</p> <p>6 not a -- for example, I'm not a legal expert in</p> <p>7 copyrights.</p> <p>8 Q. Well, with respect to copyright</p> <p>9 specifically, is there some area of copyright,</p> <p>10 that concept, that you do consider yourself an</p> <p>11 expert in?</p> <p>12 A. So within the area of copyright, a</p> <p>13 copyright, a copyright is a, is an input to an</p> <p>14 economic process.</p> <p>15 And I'm an expert in industrial</p> <p>16 organization, and so to the extent that, you</p> <p>17 know, copyrights and perhaps they play a</p> <p>18 particular role in the economics of technology.</p> <p>19 So I'm an expert in -- I'm an expert</p> <p>20 in the economic processes that use copyrights,</p> <p>21 but I'm not a specific expert in copyright law.</p> <p>22 Q. Both of these types of industrial</p> <p>23 organizations and technology involve a lot of</p> <p>24 different subject matter; right?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 43</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 plaintiffs' copyrights by scanning and indexing</p> <p>3 several million books as part of its Google</p> <p>4 Books project, ("Google Books"), as well as by</p> <p>5 making certain related uses of those works, such</p> <p>6 as displaying snippets."</p> <p>7 Where did you get that understanding?</p> <p>8 A. So that's my understanding from the,</p> <p>9 for example, the complaint.</p> <p>10 Q. Anything else?</p> <p>11 A. Sorry, what is your question?</p> <p>12 Q. Did you get that understanding from</p> <p>13 anything other than the complaint?</p> <p>14 A. You know, I think that, you know,</p> <p>15 that this is the controversy is, you know,</p> <p>16 probably, it's most notably in the complaint.</p> <p>17 But any of the legal filings, you know, have</p> <p>18 some discussion of that.</p> <p>19 Q. So you understand this is a copyright</p> <p>20 case; right?</p> <p>21 A. I do.</p> <p>22 Q. You don't consider yourself an expert</p> <p>23 in copyright; do you?</p> <p>24 MR. McGOWAN: Vague.</p> <p>25 You may answer.</p>	<p style="text-align: right;">Page 45</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 Q. You could apply them to various</p> <p>3 different subject matters, including copyright;</p> <p>4 correct.</p> <p>5 A. Correct.</p> <p>6 Q. But you don't consider yourself an</p> <p>7 expert on all these subjects that you might</p> <p>8 apply your area of expertise to; do you?</p> <p>9 MR. McGOWAN: Objection, vague.</p> <p>10 A. So I've already answered that I'm not</p> <p>11 an expert in the legal theory of copyright. I</p> <p>12 am an expert in industrial organization, which</p> <p>13 is the study of competition in markets, to which</p> <p>14 copyrights and other forms of intellectual</p> <p>15 property are an important input.</p> <p>16 Q. Is your report at all about</p> <p>17 industrial organization here?</p> <p>18 A. Yes, my report is about, yes. The,</p> <p>19 yes, my report is about industrial organization.</p> <p>20 Q. In what sense is your report about</p> <p>21 industrial organization?</p> <p>22 A. So, for example, my report discusses,</p> <p>23 my report discusses the topic of whether Google</p> <p>24 Books is a new good. And that is a topic -- the</p> <p>25 study of new books is a -- sorry.</p>

12 (Pages 42 - 45)

<p style="text-align: right;">Page 46</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. New goods?</p> <p>3 A. Strike that. New goods is a study,</p> <p>4 an important area of study in industrial</p> <p>5 organization.</p> <p>6 I discuss whether Google Books, the</p> <p>7 services provided by Google Books are a</p> <p>8 substitute or a compliment for the purchase of</p> <p>9 the book. That is also an area of industrial</p> <p>10 organization.</p> <p>11 Q. When you discuss those topics in this</p> <p>12 report, did you include or make any special</p> <p>13 allowances for the fact that this product that</p> <p>14 you're studying is a, has a copyright, which</p> <p>15 distinguishes it from a lot of goods in the</p> <p>16 marketplace that don't have that legal</p> <p>17 protection?</p> <p>18 MR. McGOWAN: Objection, foundation.</p> <p>19 You may answer.</p> <p>20 MS. ZACK: I should restate it.</p> <p>21 Q. When you wrote your report, you were</p> <p>22 writing about books. In this case, we're</p> <p>23 talking about copyrighted books which have a</p> <p>24 certain legal protection.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 48</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 you know, recognize that the products are --</p> <p>3 that the books are copyrighted, but my analysis,</p> <p>4 and my analysis, you know, understands that</p> <p>5 those products are copyrighted, but the</p> <p>6 opinions, the opinions are opinions about their</p> <p>7 relationship of the product to other products in</p> <p>8 the marketplace.</p> <p>9 Q. Have you ever done any reports where</p> <p>10 you've analyzed barriers to entry in markets?</p> <p>11 A. Expert reports for academic --</p> <p>12 Q. No, any kind of academic writing on</p> <p>13 barriers to entry?</p> <p>14 A. Sure, I have.</p> <p>15 Q. If you wrote about barriers to entry</p> <p>16 in a market, would you consider the effect of</p> <p>17 regulation?</p> <p>18 A. Sure, of course.</p> <p>19 Q. Would you consider the effect of</p> <p>20 patents and copyrights?</p> <p>21 A. Yes.</p> <p>22 Q. So you would consider that in that</p> <p>23 analysis to barriers to entry; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Going back to paragraph 6, you make</p>
<p style="text-align: right;">Page 47</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. Which distinguish these goods, these</p> <p>3 books, from many other goods that you could</p> <p>4 study in industrial organization.</p> <p>5 Does your report take account of</p> <p>6 that?</p> <p>7 MR. McGOWAN: Objection.</p> <p>8 Q. And if it does, how so?</p> <p>9 MR. McGOWAN: Objection, compound.</p> <p>10 Go ahead, you may answer.</p> <p>11 A. So my report, my report -- I might</p> <p>12 have to go vague. My report discusses the --</p> <p>13 let's see, my report discusses the question, for</p> <p>14 example, whether or not Google Books is a new</p> <p>15 good.</p> <p>16 And I understand that, and I think I</p> <p>17 discuss, that an input to the production of that</p> <p>18 new good is the copyrighted works that are</p> <p>19 searched.</p> <p>20 Q. Right, but you don't discuss any</p> <p>21 ramifications of the fact that there is a</p> <p>22 copyright for the works; right?</p> <p>23 A. That's, that's not, it's -- let me</p> <p>24 see. I think, you know, the questions that I</p> <p>25 answer in the report, the issues that I discuss,</p>	<p style="text-align: right;">Page 49</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 no specific mention in paragraph 6 about the</p> <p>3 distribution by Google to libraries of entire</p> <p>4 digital copies of books?</p> <p>5 A. I do not mention the library copy</p> <p>6 here.</p> <p>7 Q. Is there a reason why you don't</p> <p>8 mention that?</p> <p>9 A. So I, I mention the scanning. And my</p> <p>10 understanding is the scanning -- my</p> <p>11 understanding is that Google has made the scan,</p> <p>12 and they have allowed libraries to download that</p> <p>13 scan, if they choose to do so.</p> <p>14 So I understand, I understand that</p> <p>15 the issue of the library copy, but I would, I</p> <p>16 would, in paragraph 6, the issue of the library</p> <p>17 copy, to me, is encompassed in the term scanning</p> <p>18 that I've used.</p> <p>19 Q. So Google's giving the library a</p> <p>20 copy, you understand; is that right?</p> <p>21 MR. McGOWAN: Objection.</p> <p>22 Q. You understand that that occurs?</p> <p>23 A. I understand that Google provides</p> <p>24 facilities from which the library can, if they</p> <p>25 choose, to make a copy.</p>

<p style="text-align: right;">Page 50</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. Have you read the agreements between</p> <p>3 Google and the libraries?</p> <p>4 A. I think I have not. I have read the</p> <p>5 deposition of -- I'm not sure I can pronounce</p> <p>6 it.</p> <p>7 Q. Paul Courant?</p> <p>8 A. Well, I have read the deposition of</p> <p>9 Paul Courant, which discusses that issue, but</p> <p>10 I've also read the deposition Stephane</p> <p>11 Jaskiewicz, which discusses that issue.</p> <p>12 Q. You haven't read the actual contracts</p> <p>13 between Google and its library partners?</p> <p>14 A. No.</p> <p>15 Q. Google has contractually agreed to</p> <p>16 provide digital copies to the libraries; are you</p> <p>17 aware of that?</p> <p>18 A. As I said before, my understanding</p> <p>19 from these materials that I've just described to</p> <p>20 you, is that Google has provided the facilities</p> <p>21 from which the libraries can make a copy.</p> <p>22 Q. What do you mean by providing the</p> <p>23 facilities?</p> <p>24 A. So my understanding is that the</p> <p>25 libraries can download a copy, if they choose to</p>	<p style="text-align: right;">Page 52</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 (Brief recess taken.)</p> <p>3 FURTHER EXAMINATION</p> <p>4 BY MS. ZACK:</p> <p>5 Q. Paragraph 7 of your report -- I'm</p> <p>6 sorry, before I get to paragraph 7, I wanted to</p> <p>7 ask you something about flipping further back in</p> <p>8 your report to page 15?</p> <p>9 A. Um-hmm.</p> <p>10 Q. If you look at your footnote 64, do</p> <p>11 you see that?</p> <p>12 A. Yes.</p> <p>13 Q. You talk about "The preceding</p> <p>14 analysis," do you see where I am?</p> <p>15 A. Um-hmm.</p> <p>16 Q. "The preceding analysis suggests that</p> <p>17 such a market could only be created by law</p> <p>18 because the relevant economic principles would</p> <p>19 not sustain it otherwise"; do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Those relevant economic principles,</p> <p>22 are those the same principles you discuss</p> <p>23 elsewhere in your report or are they different</p> <p>24 principles?</p> <p>25 A. So those are the economic principles</p>
<p style="text-align: right;">Page 51</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 do so.</p> <p>3 Q. But you don't understand that</p> <p>4 Google's contractually obligated to allow them</p> <p>5 to download the books?</p> <p>6 A. Yes, I understand that Google does</p> <p>7 allow them to download the books, and that's --</p> <p>8 and I understand that that's part of the</p> <p>9 agreement with the libraries.</p> <p>10 Q. Because there's a difference between</p> <p>11 allowing someone to do something and having a</p> <p>12 contractual obligation to do it; isn't there?</p> <p>13 MR. McGOWAN: Objection.</p> <p>14 Q. As a matter of economics?</p> <p>15 MR. McGOWAN: Objection to the extent</p> <p>16 it calls for a legal conclusion.</p> <p>17 A. So I'm not a legal expert. My</p> <p>18 understanding is that Google has agreed to make</p> <p>19 the facilities available to the libraries so</p> <p>20 that they can download a copy, if they choose to</p> <p>21 do so.</p> <p>22 MR. McGOWAN: We have been going a</p> <p>23 little over an hour.</p> <p>24 MS. ZACK: If you want to take a</p> <p>25 break.</p>	<p style="text-align: right;">Page 53</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 that I discussed from point -- all of section,</p> <p>3 the section labeled B starting on page 14.</p> <p>4 Q. So you're not referring there to any</p> <p>5 additional economic principles, other than the</p> <p>6 ones you've otherwise described in your report;</p> <p>7 that's just what I want to know; right?</p> <p>8 A. Right.</p> <p>9 Q. So the answer is you're not referring</p> <p>10 to anything outside the report?</p> <p>11 A. I am -- right. I'm referring to the</p> <p>12 preceding analysis, which actually perhaps</p> <p>13 preceding is a poor choice of words, because I'm</p> <p>14 referring to the analysis in points 48 to 54.</p> <p>15 Q. Going back to paragraph 7 on page 2,</p> <p>16 it's a summary of your conclusions.</p> <p>17 It says, "I conclude based on the</p> <p>18 evidence I have seen, that: (1) Google Books is</p> <p>19 new good - it provides benefits to consumers</p> <p>20 that previous goods did not."</p> <p>21 When you use the term "Google Books"</p> <p>22 there, are you saying that Google Books itself</p> <p>23 is a new good?</p> <p>24 A. I am saying Google Books itself is a</p> <p>25 new good.</p>

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1 J.A. Chevalier - C O N F I D E N T I A L

2 Q. So that includes both the Partner
3 Program and the Library Project?

4 A. It includes all of the elements of
5 Google Books.

6 Q. If we took Google Books and put it
7 into the two categories, the Partner Program
8 first, is the Partner Program a new good?

9 A. Do you mean the product Google Books
10 implementing only books, only the Partner
11 Program, but not the other books?

12 Q. Yes, let's just say hypothetically,
13 Google Books only included Partner Program
14 books, would that be a new good, in your
15 opinion?

16 A. That would be a new good, but it
17 would be a good of lower value to consumers than
18 the totality of Google Books.

19 Q. Is Amazon Search Within the Book, a
20 new good?

21 A. I haven't analyzed that.

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8 A. So, in other words, if you took the
9 45,000 partners in the most recent year, and you
10 asked what's the total amount of revenue they
11 received, the mode, the most frequent number.

12 Q. Oh, the modal partner?

13 A. Modal, yes. The mode would be zero.

14 Q. So you're saying the fact that ad
15 revenues are shared, doesn't play a large role
16 in your analysis.

17 Does it play any role in your
18 analysis?

19 A. As I just said, I considered it. But
20 I decided since the ad revenues are small, they
21 don't play a substantial role in my analysis.

22 Q. That's what I'm trying to say. What
23 role do they play? You didn't say it plays no
24 role, so what role does it play?

25 A. I -- I evaluated the Partner Program

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1 J.A. Chevalier - C O N F I D E N T I A L

2 and determined that the ad revenue, for most
3 partners, the partner would have to gain
4 substantial benefits from being in the program,
5 apart from the ad revenue, in order to
6 participate. Because for the typical partner,
7 the ad revenues are zero.

8 Q. Is that because nobody is clicking on
9 the books?

10 A. No, I don't think that's right.

11 Q. How do the partners get revenue in
12 the Partner Program, the publishing partners get
13 revenue?

14 A. My understanding is they get revenue
15 if they click on -- if, if consumers click on
16 ads.

17 The publishing partners, of course,
18 also get revenue if the consumer goes and buys
19 the book.

20 Q. Is it your understanding that the
21 publishing partner gets any revenue from the
22 Partner Program, if someone clicks on the Amazon
23 link?

24 A. So my understanding is that the
25 partner gets revenue -- I would actually like to

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1 J.A. Chevalier - CONFIDENTIAL
 2 double-check this because I would like to get
 3 this right.
 4 But my understanding is that the
 5 partner gets revenue only as it might flow
 6 through the Amazon transaction, if the consumer
 7 buys the book.
 8 Q. So they get revenue from Google?
 9 A. My understanding is they do not.
 10 Q. Well, all right, now I'm confused.
 11 It's not your understanding that Google is
 12 paying ad revenues to partners when books are
 13 purchased at Amazon; are you?
 14 A. It's my understanding that Google is
 15 paying ad revenues to partners when consumers
 16 click on ads.
 17 Q. Is the Amazon link considered an ad?
 18 A. My understanding is that it is not.
 19 Q. Where did you get that understanding?
 20 A. So that's my understanding from the
 21 materials I cite here regarding the -- this is
 22 my reading of the description of the Google
 23 Partners Program that are cited in my report.
 24 So I cite the Google Partner Program
 25 description pages on the Google website, and

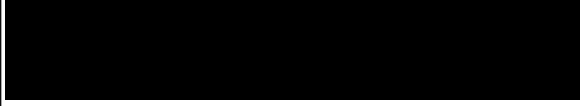
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1 J.A. Chevalier - CONFIDENTIAL
 2 that's my understanding from that.
 3 Q. So you didn't ask anybody from Google
 4 how it works?
 5 MR. McGOWAN: Objection. Asked and
 6 answered.
 7 You may answer.
 8 A. I did not. I did not. As I
 9 mentioned before, I did not speak to Google
 10 employees in preparing this report.
 11 Q. Do you think the materials that you
 12 looked at are crystal clear?
 13 A. I think the materials -- to me, the
 14 materials I looked at were clear.
 15 Q. I pre-marked PX 96, which is from
 16 Google's website. It's a number of pages
 17 collected from Google's website concerning the
 18 Partner Program.
 19 Take your time and flip through it,
 20 but have you seen any of these pages before?
 21 A. Yes.
 22 Q. Are these the same things that you
 23 looked at?
 24 A. Roughly, I think I have looked at
 25 these pages. I also cite some other pages that

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1 J.A. Chevalier - CONFIDENTIAL
 2 are from the Partner Program website. But
 3 roughly speaking, these are what I've seen.
 4 Q. Did you look at the Partner Program
 5 contract that was on-line?
 6 A. Yes, previously.
 7 Q. Let me hand you what's been
 8 previously marked as PX 91.
 9 Have you seen this before?
 10 A. I think so, yes. I believe this is
 11 the standard downloadable one, correct.
 12 Q. Yes. So can you just show me, in
 13 these documents, where you gained your
 14 understanding as to how and on what basis
 15 partners receive funds from Google?
 16 A. So in item 96 --
 17 Q. PX 96?
 18 A. -- PX 96, that includes a summary.
 19 On the preview page for your book, we display a
 20 set of links to buy the books at the major
 21 retailers, as well as to a site of your choice.
 22 These links are not paid for by the
 23 site features. Clicking on a link to purchase
 24 your book at an on-line retailer, won't generate
 25 any revenue directly.

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1 J.A. Chevalier - CONFIDENTIAL
 2 So that, that's, so that's one piece
 3 of it. And then my understanding is Section 8,
 4 ads payment.
 5 "You agree that Google may serve
 6 third-party and/or Google provided
 7 advertisements, collectively ads, in connection
 8 with the authorized content using Google's
 9 advertising serving technology. Such ads will
 10 appear in the style and format that may be
 11 offered generally by Google when such
 12 advertising inventory is available.
 13 "You shall receive a payment related
 14 to the number of valid clicks on ads displayed
 15 on content excerpt pages as determined by Google
 16 for its participants in the program."
 17 So Section 8, combined with what do I
 18 earn from the program, I can't say that this is
 19 the exact page I looked at, at the time, but my
 20 
 21 partners are payments for ads clicked through
 22 for standard Google style ads; and that the
 23 partner additionally would earn revenues, but

16 (Pages 58 - 61)

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1 J.A. Chevalier - C O N F I D E N T I A L
2 not through the partner -- not through Google
3 for, you know, any incremental sales of the book
4 that might occur.

5 Q. Are these revenues from these
6 incremental sales that copyright owners might
7 earn, important to your report?

8 A. So because, because those sales occur
9 in other places, you know, they occur at Amazon
10 or at Barnes & Noble, I don't have, I don't have
11 a mechanism to measure them.

12 But the fact -- and it is not
13 necessarily the case that incremental sales that
14 take place, would only take place, you know,
15 from the search page from a click.

16 But the fact that displaying the book
17 in Google, Google Books, in the Partner Program,
18 would provide incremental sales, is important to
19 my report.

20 Because, because as I've said, I
21 think that the revenues from the ad program are
22 de minimis.

23 And so the opportunity for readers to
24 learn about the book and, hopefully, buy the
25 book, is -- I have concluded the main benefit

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1 J.A. Chevalier - C O N F I D E N T I A L
2 from participating in the Partner Program.

3 Q. The main benefit to publishers and
4 authors?

5 A. The main benefit to publishers and
6 authors.

7 Q. Is that also the main benefit to
8 publishers and authors, in your opinion, of
9 having their books available for search through
10 the Library Project?

11 MR. McGOWAN: Objection, vague.

12 You may answer.

13 A. So I think the -- yes, I should note
14 that because many of the books in the Library
15 Program are out of print, the consumer may have
16 limited opportunities to purchase those books.

17 But to the extent that there is an
18 opportunity to purchase the book or the consumer
19 becomes interested in the author and purchases
20 the author's other books, you know, on net, I
21 think the publisher and author would receive a
22 benefit from being in the Google Library
23 Project, because it would stimulate interest in
24 demand for the books.

25 Q. So with respect to out-of-print

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1 J.A. Chevalier - C O N F I D E N T I A L
2 books, it would stimulate demand and how is the
3 author monetizing that or the publisher?

4 A. So it will clearly be more difficult
5 for the author to monetize that interest, that
6 increased demand for an out-of-print book.

7 So there may be circumstances when
8 monetarily the -- there are probably many
9 circumstances where, you know, the consumer may
10 be interested in purchasing the book, but, you
11 know, there's no mechanism for that to occur.

12 The consumer may purchase, you know,
13 in some circumstances, a used book. That
14 doesn't directly benefit the author.

15 To the extent, I think it's, I think
16 it's reasonable that, you know, the search, you
17 know -- in circumstances where there's an
18 opportunity for the consumer to buy the book or
19 to buy another book by the author, you know,
20 then the author will benefit; or if enough
21 consumers have interest, you know, there are
22 programs to bring books back into print, which
23 are possible ways in which the author would
24 ultimately benefit.

25 Q. Does Google provide any information

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1 J.A. Chevalier - C O N F I D E N T I A L
2 to copyright owners about how many, who are not
3 in the Partner Program, so copyright owners
4 whose books are in Google Books through the
5 Library Project, to your knowledge, does Google
6 provide copyright owners with any information
7 about how many searches have been made on their
8 book?

9 A. I believe they do not.

10 Q. So how would they know, how does that
11 benefit the author or publisher if they don't
12 know how many, how much demand is being
13 expressed?

14 A. Well, if, for example, a number of
15 consumers, if consumers -- so they won't know
16 that the consumer searched for the book.

17 But if consumers seek the book
18 through Amazon, if the consumer, if the consumer
19 seeks out the author's other books, the author
20 may not be able to track the extent to which
21 Google Books has driven demand for their books,
22 but it nonetheless exists.

23 Q. How do you think Google tracks that?

24 A. Well, there are things that are
25 outside of Google's ability to track. So they

<p style="text-align: right;">Page 66</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 presumably know what terms people searched on.</p> <p>3 They probably do not know what things that came</p> <p>4 up on a page, unless the person clicks the</p> <p>5 individual was interested in, they may know --</p> <p>6 they do know whether the person clicked on a</p> <p>7 link, but they don't know of the -- they</p> <p>8 ultimately, do not know whether -- Google, my</p> <p>9 understanding is, does not ultimately know</p> <p>10 whether the consumer made a purchase, unless</p> <p>11 they did so through Google Play, made a purchase</p> <p>12 in response to having searched for the book.</p> <p>13 Q. My question is do you know whether</p> <p>14 Google tracks searches in books?</p> <p>15 MR. McGOWAN: Objection, vague.</p> <p>16 You may answer.</p> <p>17 A. So what do you mean by searches in</p> <p>18 books?</p> <p>19 So do you mean does Google keep track</p> <p>20 of the search terms?</p> <p>21 Q. Yes, that people use.</p> <p>22 A. I'm sure that Google has a record of</p> <p>23 the search terms that people use.</p> <p>24 Q. Do you think they have a record of</p> <p>25 what books are displayed as a result of those</p>	<p style="text-align: right;">Page 68</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 sometimes search that way.</p> <p>3 But, you know, I don't know even how</p> <p>4 frequent it is for consumers to undertake a</p> <p>5 secondary search within the book, and I don't</p> <p>6 even recall that. I don't, haven't used that</p> <p>7 feature of the website.</p> <p>8 But they, you know, the entries that</p> <p>9 the consumer has made in Google websites, I'm</p> <p>10 sure Google at some moment knows.</p> <p>11 Though it's, you know, obviously, a</p> <p>12 mass of data that's probably, you know, in a</p> <p>13 very raw form. But at some point, they know it.</p> <p>14 Q. You don't think Google uses that data</p> <p>15 for its own purposes?</p> <p>16 MR. McGOWAN: Objection.</p> <p>17 You may answer.</p> <p>18 A. I, for example, know that the search</p> <p>19 terms used at the Google search page are used to</p> <p>20 sell ads, so they use the, you know, that's the</p> <p>21 whole business model.</p> <p>22 Q. What do you know about Google's</p> <p>23 business model?</p> <p>24 A. Well, Google's, obviously, a pretty</p> <p>25 complicated company with a number of different</p>
<p style="text-align: right;">Page 67</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 search terms?</p> <p>3 A. I imagine they do.</p> <p>4 Q. Do you think that when people search</p> <p>5 inside a given book with additional search</p> <p>6 terms, that Google keeps records of that?</p> <p>7 A. I am sure in some raw data form, any</p> <p>8 click that the consumer made within a Google</p> <p>9 site is, you know, whether it's kept, how it's</p> <p>10 aggregated, I don't know, but at some moment,</p> <p>11 Google has a record of the clicks that the</p> <p>12 consumers make in Google sites.</p> <p>13 Q. Well, I don't know what you mean by</p> <p>14 click, but I'm saying do they keep a record of a</p> <p>15 search term entered by a user, that in their</p> <p>16 function that's called Search Within the Book?</p> <p>17 MR. McGOWAN: Objection. I think you</p> <p>18 crossed companies in that question.</p> <p>19 MS. ZACK: I may have. I'm sorry.</p> <p>20 Well, there is a Search Inside the Book</p> <p>21 feature of Google.</p> <p>22 A. So, yes, so my understanding is the</p> <p>23 main way consumers interact with Google Books is</p> <p>24 they enter a search term at the main Google</p> <p>25 website or possibly at Google Books. I</p>	<p style="text-align: right;">Page 69</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 products and services. Are you talking about</p> <p>3 search?</p> <p>4 Q. Yes, let's talk about search.</p> <p>5 A. So is your question what is the</p> <p>6 business model of Google?</p> <p>7 Q. Um-hmm.</p> <p>8 A. So my understanding is that Google</p> <p>9 provides search functionality, and they sell ads</p> <p>10 that are key to search terms.</p> <p>11 Q. Do they have any way of targeting ads</p> <p>12 to users?</p> <p>13 MR. McGOWAN: Objection as to form.</p> <p>14 You may answer.</p> <p>15 A. So I'm not an expert on Google search</p> <p>16 engine. My understanding is that, for example,</p> <p>17 I am more likely to receive ads for businesses</p> <p>18 in New Haven, Connecticut than someone who</p> <p>19 doesn't live in New Haven, Connecticut.</p> <p>20 So there is some targeting, but I</p> <p>21 don't know the intricacies of it, and I'm not an</p> <p>22 expert on that.</p> <p>23 Q. Do you know whether or not Google</p> <p>24 uses information it obtains from searches made</p> <p>25 within Google Books for purposes of its general</p>

<p style="text-align: right;">Page 70</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 ad targeting?</p> <p>3 MR. McGOWAN: Objection, foundation.</p> <p>4 A. So I don't know about that</p> <p>5 specifically.</p> <p>6 Q. Isn't it relevant to your report,</p> <p>7 what benefits Google is getting from Google</p> <p>8 search and Google Books?</p> <p>9 MR. McGOWAN: Objection, foundation.</p> <p>10 You may answer.</p> <p>11 A. Actually, I don't think it's that</p> <p>12 relevant to the specific questions that I</p> <p>13 addressed in my report, no.</p> <p>14 Q. So you're saying to me that you don't</p> <p>15 think understanding Google's financial</p> <p>16 interests, with respect to its search engine, is</p> <p>17 relevant to the conclusions you have reached in</p> <p>18 your report?</p> <p>19 MR. McGOWAN: Objection, foundation.</p> <p>20 You may answer.</p> <p>21 A. So, for example, I don't think it's</p> <p>22 relevant to the question of whether Google Books</p> <p>23 is a new good.</p> <p>24 Q. Okay, anything else it's not relevant</p> <p>25 to?</p>	<p style="text-align: right;">Page 72</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 if you count up all the costs and benefits that</p> <p>3 Google's received, I am not convinced that the</p> <p>4 Google Books project was a positive, what we in</p> <p>5 economics call a net present value project for</p> <p>6 Google. But that's, you know, not germane to my</p> <p>7 conclusions.</p> <p>8 Q. You're not convinced? Have you</p> <p>9 analyzed that?</p> <p>10 A. It's not germane to my conclusions.</p> <p>11 Q. Whether it's germane or not, you have</p> <p>12 not done any analysis of the benefits to Google,</p> <p>13 so how could you possibly express an opinion</p> <p>14 about it?</p> <p>15 You haven't even asked Google; have</p> <p>16 you?</p> <p>17 MR. McGOWAN: Objection,</p> <p>18 argumentative, compound.</p> <p>19 MS. ZACK: I'll withdraw it.</p> <p>20 Q. You've been retained by Google.</p> <p>21 You haven't asked anyone at Google</p> <p>22 how much money they make or from Google Books?</p> <p>23 MR. McGOWAN: Objection, foundation,</p> <p>24 asked and answered.</p> <p>25 You may answer.</p>
<p style="text-align: right;">Page 71</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. I don't think it's particularly</p> <p>3 relevant to the question of whether the search</p> <p>4 output is a compliment or substitute to the</p> <p>5 purchase of the good -- of the book.</p> <p>6 I, I can -- in the final section of</p> <p>7 the report, I considered, you know, whether a</p> <p>8 market for search terms would occur. I think</p> <p>9 it's not that relevant to that either.</p> <p>10 Q. Referring you to, back to page 2,</p> <p>11 paragraph 7, you conclude, your conclusion</p> <p>12 number 2 is Google Books provides value to</p> <p>13 authors; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Does Google Books provide value to</p> <p>16 Google?</p> <p>17 A. I believe Google Books probably</p> <p>18 provides value to Google, that it's -- I</p> <p>19 obviously didn't express an opinion about it.</p> <p>20 Q. Do you have any doubt that Google</p> <p>21 Books provides value to Google?</p> <p>22 MR. McGOWAN: Objection, vague.</p> <p>23 You may answer.</p> <p>24 A. I, I am not -- I have, I am not</p> <p>25 convinced that the Google Books project was a,</p>	<p style="text-align: right;">Page 73</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. There is not -- I was retained to</p> <p>3 answer specific questions. The answer to that</p> <p>4 question is not germane to these three</p> <p>5 conclusions summarized in point 7.</p> <p>6 Q. Seven (3), you say "Economic analysis</p> <p>7 provides no reason to believe that Google Books</p> <p>8 has superceded any potential market for books or</p> <p>9 licenses to scan and index books," and your</p> <p>10 reference there to economic analysis, is that</p> <p>11 the economic analysis in your report?</p> <p>12 A. Correct.</p> <p>13 Q. You are not referring to any other</p> <p>14 economic analysis?</p> <p>15 A. Correct.</p> <p>16 Q. Referring you to paragraph 9, "Google</p> <p>17 Books is a search tool developed by Google."</p> <p>18 A. Yes.</p> <p>19 Q. What do you mean by a search tool?</p> <p>20 A. I mean that Google Books is a</p> <p>21 mechanism for consumers to, or users, to search.</p> <p>22 Q. Do you consider Google, Google's</p> <p>23 general search engine, to be a search tool?</p> <p>24 A. I do.</p> <p>25 Q. Are there any differences that you're</p>

<p style="text-align: right;">Page 74</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 aware of that you consider material between the</p> <p>3 Google search engine, generally, and Google</p> <p>4 Books?</p> <p>5 A. Well, so Google Books is the marriage</p> <p>6 of the Google digitization project, Google</p> <p>7 search functionality and, you know, a display</p> <p>8 mechanism that's particular to books.</p> <p>9 So it's, you know, Google Books is</p> <p>10 distinct from the rest of the search engine.</p> <p>11 Though, it, obviously, uses expertise related to</p> <p>12 the general search expertise.</p> <p>13 Q. So Google's -- can we -- I don't know</p> <p>14 what to call it, but the general search engine.</p> <p>15 You know what I'm talking about when</p> <p>16 we talk about Google's general search engine, to</p> <p>17 distinguish it from the Google Books search</p> <p>18 engine, can we use those terms generally here?</p> <p>19 MR. McGOWAN: Object, vague,</p> <p>20 foundation.</p> <p>21 MS. ZACK: I don't want to be vague.</p> <p>22 I want to make sure the witness understands</p> <p>23 what we're talking about.</p> <p>24 Q. Do you understand those distinctions?</p> <p>25 A. So you're going to use the term the</p>	<p style="text-align: right;">Page 76</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 program, the snippet, the whole text, the, the</p> <p>3 partner.</p> <p>4 Q. Do you understand that Google Books</p> <p>5 involves Google obtaining off-line content and</p> <p>6 making it available on the Internet?</p> <p>7 MR. McGOWAN: Objection, vague.</p> <p>8 You may answer.</p> <p>9 A. I understand that the Google Books</p> <p>10 project involved Google digitizing physical</p> <p>11 books.</p> <p>12 Q. That's different than the general</p> <p>13 Google Web engine?</p> <p>14 MR. McGOWAN: Objection, vague.</p> <p>15 Calls for speculation.</p> <p>16 A. So I'm not aware of every program</p> <p>17 that Google has undertaken. For example, I</p> <p>18 don't know whether there's a digitization</p> <p>19 component in, say, Google Scholar.</p> <p>20 But when we think about the Google</p> <p>21 search engine, certainly, the most common thing</p> <p>22 that we could -- that my understanding is it</p> <p>23 searches materials, you know, in large part, on</p> <p>24 the Web.</p> <p>25 Q. In order to search the off-line</p>
<p style="text-align: right;">Page 75</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 general Google search engine and Google Books</p> <p>3 separately?</p> <p>4 Q. Right.</p> <p>5 A. Okay.</p> <p>6 Q. Is it your understanding that</p> <p>7 Google's general search engine crawls the Web?</p> <p>8 A. It is my understanding that Google</p> <p>9 search engine searches Web pages, yes.</p> <p>10 Q. Those Web pages are not placed on the</p> <p>11 Web by Google; right?</p> <p>12 A. In general, those Web pages are not</p> <p>13 placed on the Web by Google.</p> <p>14 Q. With respect to Google Books, do you</p> <p>15 understand that Google actually digitizes</p> <p>16 material for purposes of searching and placing</p> <p>17 it on the Web?</p> <p>18 MR. McGOWAN: Objection, foundation.</p> <p>19 Calls for speculation.</p> <p>20 You may answer.</p> <p>21 A. So my understanding is that Google</p> <p>22 digitizes material. That that material is</p> <p>23 searched in Google's servers, and then the</p> <p>24 material -- and then, you know, the material</p> <p>25 displayed is, you know, depending on the</p>	<p style="text-align: right;">Page 77</p> <p>1 J.A. Chevalier - CONFIDENTIAL</p> <p>2 material, the books, Google digitizes it;</p> <p>3 correct?</p> <p>4 A. Yes, correct.</p> <p>5 Q. So Google Books then involves not</p> <p>6 just a search tool, but the creation of an</p> <p>7 entire database of digital books; correct?</p> <p>8 A. The Google search, the Google Books,</p> <p>9 you know, in order to create the search tool,</p> <p>10 the search tool is the product facing consumers.</p> <p>11 As an input to that, Google created this digital</p> <p>12 database.</p> <p>13 Q. So wouldn't it be more correct to say</p> <p>14 Google Books is a digital database of books,</p> <p>15 coupled with the search tool?</p> <p>16 A. I think you could say that. I</p> <p>17 wouldn't say it's more correct. I think that</p> <p>18 Google Books -- I mean, you know, those are both</p> <p>19 pieces of the project.</p> <p>20 You know, when I describe the Google</p> <p>21 Books, I'm thinking of the product that's</p> <p>22 relevant to consumers in the marketplace, and</p> <p>23 that's a search tool.</p> <p>24 That is a search tool that relies on</p> <p>25 the comprehensiveness of the database that's</p>

<p style="text-align: right;">Page 78</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 created. So, you know, obviously, the</p> <p>3 digitization is an important input to the final</p> <p>4 product.</p> <p>5 Q. Is the provision of the books to the</p> <p>6 library, the digital copies of the books to the</p> <p>7 library, an important component of the project?</p> <p>8 MR. McGOWAN: Objection, foundation.</p> <p>9 You may answer.</p> <p>10 A. So, again, I understand that as part</p> <p>11 of its agreement with the libraries, Google</p> <p>12 provides the facilities that allow the libraries</p> <p>13 to make a digital copy.</p> <p>14 I don't -- I, I imagine, I think that</p> <p>15 -- I won't say imagine -- I think that's an</p> <p>16 important piece of, I understand, from, say,</p> <p>17 Mr. Courant's deposition, that that's an</p> <p>18 important component of the library's</p> <p>19 participation.</p> <p>20 But, again, I would think that for</p> <p>21 the purposes of the consumer product, which is</p> <p>22 what I'm focused on in Section 1 of the report,</p> <p>23 the digital copy to the library is not the</p> <p>24 consumer product that I'm really describing.</p> <p>25 Q. But from Google's point of view, it's</p>	<p style="text-align: right;">Page 80</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Isn't it important to Google to have</p> <p>3 books to digitize?</p> <p>4 A. It is important to Google to have</p> <p>5 books to digitize.</p> <p>6 Q. Is it your understanding that they</p> <p>7 get the books from the libraries?</p> <p>8 A. It is my understanding that the</p> <p>9 books, that the core of the books that are</p> <p>10 included, were from the libraries.</p> <p>11 Q. Is it your understanding that the</p> <p>12 libraries provide those books to Google for</p> <p>13 digitization in exchange for a digital copy to</p> <p>14 the libraries?</p> <p>15 MR. McGOWAN: Objection to the extent</p> <p>16 it calls for a limited conclusion.</p> <p>17 You may answer.</p> <p>18 A. So is my understanding that the</p> <p>19 libraries provide the books to Google for</p> <p>20 digitization.</p> <p>21 It's also my understanding that the</p> <p>22 opportunity to make a digital copy is of value</p> <p>23 to the libraries.</p> <p>24 So, you know, I cannot, I cannot say</p> <p>25 exactly what was essential to the participation</p>
<p style="text-align: right;">Page 79</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 an important component because that's how Google</p> <p>3 gets the physical books to copyright?</p> <p>4 MR. McGOWAN: Objection, vague.</p> <p>5 You may answer.</p> <p>6 A. So my understanding is from, say,</p> <p>7 Mr. Courant's deposition, is that the ability to</p> <p>8 make a digital copy on the part of the</p> <p>9 libraries, is a value to the libraries.</p> <p>10 Q. I wasn't asking what was the value to</p> <p>11 the libraries.</p> <p>12 I was asking what was the value to</p> <p>13 Google.</p> <p>14 And I said isn't it important to</p> <p>15 Google, the library digital copy, since that is</p> <p>16 necessary for Google to get the print books and</p> <p>17 digitizes, puts into its search tool, and then</p> <p>18 provides digital copies back to the libraries?</p> <p>19 MR. McGOWAN: Can I have that read</p> <p>20 back, please.</p> <p>21 (The record was read.)</p> <p>22 MS. ZACK: I will restate it.</p> <p>23 Q. I was saying my question is not about</p> <p>24 the library's perspective, but about Google's</p> <p>25 perspective.</p>	<p style="text-align: right;">Page 81</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 of every partner. But I think the facility to</p> <p>3 make a digital copy, would be an important</p> <p>4 component of the library's participation.</p> <p>5 That's my understanding from Mr. Courant.</p> <p>6 Q. That's what got the libraries to</p> <p>7 participate; correct?</p> <p>8 MR. McGOWAN: Objection. Calls for</p> <p>9 speculation.</p> <p>10 You may answer.</p> <p>11 A. So as I just said, I understand the</p> <p>12 opportunity to make a digital copy is of value</p> <p>13 to the libraries, but I really can't say whether</p> <p>14 that was the crucial element for every library.</p> <p>15 Q. What kind of value is it to the</p> <p>16 libraries to get the digital copy?</p> <p>17 A. So my understanding from, for</p> <p>18 example, Mr. Courant's deposition, is that, you</p> <p>19 know, the library's fundamental mission</p> <p>20 includes, for example, preservation.</p> <p>21 And so the mere existence of the</p> <p>22 opportunity to make a digital copy, could be of</p> <p>23 value to the library.</p> <p>24 So I think Mr. Courant, you know,</p> <p>25 mentions the floods in New Orleans, so that, you</p>

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2 know, the mere existence of the digital copy,
3 even if it's not used, you know, the existence
4 of the potential to make the digital copy is of
5 value to the libraries.

6 My understanding is the libraries,
7 you know, exactly the totality of what the
8 libraries plan to do and whether they will all
9 take advantage of the opportunity to make a
10 digital copy, has not yet been completely, you
11 know, resolved.

12 Q. How do you know that, how do you know
13 it hasn't been resolved?

14 A. Well, since technology's evolving,
15 the set of things that the libraries can do
16 with, if they were to make a digital copy today,
17 is smaller than the set of things they could do
18 if they were to make a digital copy at some
19 point in the future.

20 And I think, you know, in
21 Mr. Courant's deposition, he discusses, you
22 know, he mentions things like accessibility
23 features for the disabled and suggests that the
24 full set of things the library might do, given
25 that the opportunity created digital copy

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1 J.A. Chevalier - CONFIDENTIAL
2 exists, has not been fully explored.

3 Q. Would you say that the digital copy
4 to the library has a monetary value to the
5 library?

6 A. If the library makes a digital copy,
7 depending on what it does with it, it could.
8 But I don't know for a fact that in many or most
9 cases, it would.

10 Q. Well, I'm just talking about this
11 particular project, Google Books, where Google
12 makes available to libraries, digital copies.

13 Does that have a monetary value to
14 the libraries?

15 MR. McGOWAN: Objection, asked and
16 answered.

17 You may answer.

18 A. I think what I said was if the
19 library makes a copy, it may, depending on what
20 the library does with it.

21 Q. Well, does the fact, does having a,
22 is the fact that the library has in its
23 possession a digital copy, is that worth
24 something monetarily?

25 MR. McGOWAN: Same objection.

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2 A. I don't think it's necessarily clear
3 that it does. So, for example, if the
4 opportunity to make a digital copy is, you know,
5 if the library's plan is to not make the digital
6 copy until such time, you know, not -- if the
7 library's, for example, primary purpose is
8 preservation, it's not clear to me that the
9 digital copy has any monetary value.

10 I think it depends on what the
11 library does with it.

12 Q. Well, does it have monetary value if
13 they would have to otherwise pay for the digital
14 copy and they get it for free?

15 MR. McGOWAN: Same objection.

16 You may answer.

17 A. I think that's a tricky question
18 because my understanding is that while,
19 obviously, libraries, many libraries have
20 digitization projects, it's not at all clear
21 that the books digitized as part of the Google
22 Library Project, would have, in large part,
23 certainly not all or in large part, been
24 digitized by those libraries in the world where
25 the Google Library Project didn't exist.

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2 So I don't think I can assert, as you
3 have, that the Google Library Project has saved
4 them from another digitization effort.

5 Certainly, in some circumstances, it
6 may. But, you know, I think there may be
7 circumstances in which the library, simply
8 because of resource constraints, was not going
9 to undertake a digitization project.

10 Q. So just to make sure I understand.

11 If in my house I have 10 couches, and
12 someone gives me an 11th, and I don't really
13 need it, that provides no monetary value to me,
14 in your view?

15 A. Well, monetary -- you may derive some
16 utility, some happiness from having the couch.
17 But you are not going to receive any monetary
18 value for it, unless you do something to
19 monetize it.

20 Q. So the only value I get is the
21 utility value?

22 A. So it depends on what you do with the
23 couch.

24 Q. So you're saying, switching back to
25 the libraries, there would be, is it your view

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 that the libraries would have a utility value in</p> <p>3 the digital copies they get from Google?</p> <p>4 A. So my understanding, as I've said</p> <p>5 before, is that the libraries value the</p> <p>6 opportunity to create a digital copy.</p> <p>7 Whether that's a monetary value, I</p> <p>8 mean it's a little hard to think about utility</p> <p>9 when you think of an entity like the library.</p> <p>10 You know, so, for example, if the</p> <p>11 library chooses to make no digital copy, but,</p> <p>12 you know, thinks about, you know, except in the</p> <p>13 eventuality where the library burns down, you</p> <p>14 know, I think the librarian is probably happier</p> <p>15 in that circumstance, but I don't think there's</p> <p>16 a monetary value.</p> <p>17 Q. Do you know how many digital copies</p> <p>18 have been provided by Google to libraries in the</p> <p>19 Google Library Project?</p> <p>20 MR. McGOWAN: Objection, foundation.</p> <p>21 You may answer.</p> <p>22 A. So my understanding is that the</p> <p>23 libraries have the opportunity to make a digital</p> <p>24 copy, and I do not know how many digital copies</p> <p>25 the libraries have made.</p>	<p style="text-align: right;">Page 88</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 digital copies is not germane to your report?</p> <p>3 A. Whether or not the libraries have</p> <p>4 made a digital copy and what it is that the</p> <p>5 library will do with them, is not, is outside</p> <p>6 the scope of my assignment.</p> <p>7 It may be important to the case, but</p> <p>8 it is not important to my report.</p> <p>9 Q. Do you know with respect to the</p> <p>10 Google Library Project, not the Partner Program</p> <p>11 portion, how many of the books that Google scans</p> <p>12 and includes in the search tool, as you describe</p> <p>13 it, were commercially available books, as</p> <p>14 opposed to not commercially available books?</p> <p>15 A. I don't know that.</p> <p>16 Q. If I told you that 90 percent of the</p> <p>17 books were not commercially available, would</p> <p>18 that affect your opinions in any way?</p> <p>19 A. That would not affect my opinions.</p> <p>20 Q. If I told you that they were 10</p> <p>21 percent, would that affect your opinion?</p> <p>22 A. No.</p> <p>23 Q. Referring you to paragraph 10 on page</p> <p>24 3 of your report, about a little, you know, over</p> <p>25 halfway down, there is a sentence that begins,</p>
<p style="text-align: right;">Page 87</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 Q. So you didn't get that information</p> <p>3 from Google?</p> <p>4 A. I did not get that information from</p> <p>5 Google, if Google has it.</p> <p>6 Q. They have it.</p> <p>7 A. Okay.</p> <p>8 Q. Would it matter to you how many</p> <p>9 libraries have chosen to afford themselves of</p> <p>10 that right to get a digital copy?</p> <p>11 MR. McGOWAN: Objection, calls for</p> <p>12 conclusion.</p> <p>13 You may answer.</p> <p>14 A. So I think that's beyond the scope of</p> <p>15 my report. In my report, I opine on whether</p> <p>16 Google Books is a new book, whether it provides</p> <p>17 value to authors, and whether Google Books has</p> <p>18 superseded any potential market for licenses to</p> <p>19 scan and index books.</p> <p>20 I don't think that the exact extent</p> <p>21 to which the libraries have or have not used</p> <p>22 their digital -- their opportunity to make a</p> <p>23 digital copy, is germane to any of those three</p> <p>24 questions.</p> <p>25 Q. So the libraries' uses of their</p>	<p style="text-align: right;">Page 89</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 "Google provides a snippet view for works that</p> <p>3 have not been confirmed to be in the public</p> <p>4 domain and for which the author or publisher has</p> <p>5 not requested that the book be removed from</p> <p>6 snippet view."</p> <p>7 A. Yes.</p> <p>8 Q. That's based -- you cite the</p> <p>9 supplemental narrative responses of Google?</p> <p>10 A. Um-hmm, yes.</p> <p>11 Q. Have you personally looked at</p> <p>12 snippets in Google Books?</p> <p>13 A. I have.</p> <p>14 Q. But you say you haven't used the</p> <p>15 search within Inside the Book tool?</p> <p>16 A. To search inside a specific book, as</p> <p>17 opposed to within the set of books that use the</p> <p>18 search terms, I do not recall doing that.</p> <p>19 Q. What snippets have you seen?</p> <p>20 From what book snippets have you</p> <p>21 seen?</p> <p>22 I mean give me an example of how you</p> <p>23 did a search in Google and then how snippets</p> <p>24 came up?</p> <p>25 A. Well, I mean let me point out that</p>

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1 J.A. Chevalier - C O N F I D E N T I A L
2 while, you know, I've described what I've done
3 for the report in the report, Google Books has
4 been around for a long time, and I'm a scholar,
5 so I've used Google search tools extensively.

6 So, you know, I cannot count how many
7 times I have used Google Books.

8 So an example that I describe in my
9 report, you know, I was curious about the term
10 choke price, which I use in my report.

11 I searched the term choke price. A
12 number of books, many books came up. Some in
13 snippet view. Some with more Partner Program --
14 some in the public domain, some in snippet view
15 -- or I infer in the public domain, some in
16 snippet view, and some Partner Program books
17 where large sections of the book were available.

18 Q. So did you search out the ones that
19 were in snippet view?

20 A. What do you mean did I search on the
21 ones in snippet view?

22 Q. You got a list of books -- you put in
23 the term choke price?

24 A. Um-hmm.

25 Q. You got a list of books; right?

Page 91

1 J.A. Chevalier - C O N F I D E N T I A L

2 A. I got, yeah, a display of books, I
3 would say, yes.

4 Q. I did it too. I saw 2,700 books,
5 choke price.

6 Did you click on any of the books
7 that came up?

8 A. Yes.

9 Q. You're saying that some of the books
10 that you clicked on were in snippet view?

11 A. So it is a good -- I have seen many
12 Books in snippet view on Google Books. Whether
13 the choke price search led to books in snippet
14 view, I can't specifically remember, but I
15 believe so, yes.

16 Q. So if you click on a book that's in
17 snippet view, there is a window that comes up
18 that says search within the book.

19 You're not familiar with that?

20 A. I don't remember -- so I don't, I
21 don't think I've used that functionality
22 specifically.

23 I have looked -- I, generally, when I
24 find a book in snippet view, I look at the
25 snippets because that's what I'm interested in.

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1 J.A. Chevalier - C O N F I D E N T I A L

2 And, you know, make a decision about whether or
3 not the book is relevant to me and then, you
4 know, maybe get the book.

5 Q. So you haven't done any further
6 searches, using that search box, for further
7 snippets in the book?

8 A. I don't believe -- I mean I may have
9 at some point in a research, in research, but I
10 don't think I did it for this report.

11 Q. Do you recall that you can do
12 many snippets -- I mean do you have any
13 recollection or knowledge that you can, using
14 that search box, you can do repetitive or
15 multiple searches within a book and get
16 different snippets?

17 MR. MCGOWAN: Objection, vague.

18 You may answer.

19 A. So I know that there are limits to
20 the extent to which you can undertake searches
21 and get snippets, different snippets from the
22 same books.

23 But I do not remember exactly what
24 those limits are. I mean I know each snippet is
25 about three lines, and I know there are limits

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1 J.A. Chevalier - C O N F I D E N T I A L

2 as to how many snippets totally you can receive
3 and how many for a given search term and how
4 many for different search terms, but I don't
5 recall those, offhand.

6 I have received the message you have
7 searched this book too many times, that's come
8 up.

9 But I think that's on repeated visits
10 to the site that that happens to have happened
11 to me.

12 So I know such security terms exist,
13 both from my reading and from my personal
14 experience.

15 Q. When you say three lines, are you
16 talking about three lines like this or three
17 sentences?

18 A. My understanding is three long lines.

19 Q. Three lines of snippets? You've
20 never seen snippets longer than three lines?

21 A. Well, certainly for Partner Program
22 books and for books in the public domain, you
23 see long things.

24 Q. I'm talking about books in snippet
25 view.

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 A. I don't think I've seen snippets</p> <p>3 longer than three lines. I think it's about an</p> <p>4 8th of a page.</p> <p>5 Q. Have you determined how much of the</p> <p>6 books that Google makes available in snippet</p> <p>7 view, are available by Google's users, totally,</p> <p>8 to see snippets?</p> <p>9 MR. McGOWAN: Objection.</p> <p>10 Q. In other words, how much of the book</p> <p>11 is available?</p> <p>12 A. So my understanding is, as I said,</p> <p>13 each, each session, each user limits, you know,</p> <p>14 each, for each session and for each user, there</p> <p>15 is a limited number of snippets that can be</p> <p>16 returned to the -- in response to the user's</p> <p>17 search.</p> <p>18 Q. But that wasn't my question.</p> <p>19 A. So your question was across all</p> <p>20 users?</p> <p>21 Q. Yes, I'm saying how much of the book</p> <p>22 is available to be searched across all users?</p> <p>23 MR. McGOWAN: Objection, compound.</p> <p>24 You may answer.</p> <p>25 A. So my understanding is that the</p>	<p style="text-align: right;">Page 96</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 you know, determined to be harmful and, you</p> <p>3 know, has hurt consumers.</p> <p>4 But I'm describing the economic</p> <p>5 literature on new goods, and I think I describe</p> <p>6 it accurately.</p> <p>7 Q. So I mean let's just take an example</p> <p>8 of something like cigarettes.</p> <p>9 I mean at a certain point in time,</p> <p>10 that was a new good?</p> <p>11 A. Well, probably. I think cigarettes,</p> <p>12 yeah, cigarettes, you know, people have been</p> <p>13 drying and rolling tobacco for before there were</p> <p>14 markets for it.</p> <p>15 But commercial cigarettes, at some</p> <p>16 point, were probably a new good.</p> <p>17 Q. So the determination of it being a</p> <p>18 new good, does not depend on it improving</p> <p>19 consumer well-being; does it?</p> <p>20 A. Well, as I explained in the report,</p> <p>21 what makes a new good, a good new, is its</p> <p>22 ability to satisfy previously unmet or at least</p> <p>23 badly met needs.</p> <p>24 Q. Including addiction?</p> <p>25 A. So I believe that cigarettes satisfy</p>
<p style="text-align: right;">Page 95</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 entirety of the book is available to be</p> <p>3 searched, in general.</p> <p>4 (Brief recess taken.)</p> <p>5 FURTHER EXAMINATION</p> <p>6 BY MS. ZACK:</p> <p>7 Q. Paragraph 15 of your report, please,</p> <p>8 on page 4, it starts by saying, "There is basic</p> <p>9 agreement in the field of economics that the</p> <p>10 introduction of new goods is an important</p> <p>11 contributor to improved consumer well-being."</p> <p>12 I mean is that a blanket statement</p> <p>13 true to any new good, even something like slave</p> <p>14 labor?</p> <p>15 MR. McGOWAN: Objection, foundation.</p> <p>16 You may answer.</p> <p>17 A. So I'm not sure slave labor is a</p> <p>18 good. I think slave labor is a production</p> <p>19 input.</p> <p>20 I think what I say is right, that the</p> <p>21 introduction of new goods is an important</p> <p>22 contributor to improved consumer well-being.</p> <p>23 I imagine you could consider a</p> <p>24 situation in which a new good is introduced</p> <p>25 that, you know, subsequently, for example, is,</p>	<p style="text-align: right;">Page 97</p> <p>1 J.A. Chevalier - C O N F I D E N T I A L</p> <p>2 some consumer desires. Whether, you know, that,</p> <p>3 you know, subsequent to the introduction of</p> <p>4 cigarettes, they turned out to, you know, have</p> <p>5 very harmful health effects, you know, doesn't,</p> <p>6 I think negate the basic principle that the</p> <p>7 advance of consumer well-being has been driven,</p> <p>8 in large part, by the introduction of new goods.</p> <p>9 Q. But I mean economics generally</p> <p>10 doesn't really look at the morality of the</p> <p>11 situation; right?</p> <p>12 MR. McGOWAN: Objection, vague.</p> <p>13 You may answer.</p> <p>14 A. I mean, you know, there is a</p> <p>15 literature on economics and morals. But, you</p> <p>16 know, there's a literature on economics and</p> <p>17 morals.</p> <p>18 Q. Right, but what I asked was</p> <p>19 generally, does economics consider morals in its</p> <p>20 determinations?</p> <p>21 MR. McGOWAN: Objection, vague.</p> <p>22 You may answer.</p> <p>23 A. So I, the field of economics that I</p> <p>24 am relying on here, do not contain explicit</p> <p>25 discussions of morality in any, to any great</p>

25 (Pages 94 - 97)